

## REMARKS AND ARGUMENT

### Explanation of Amendments

Claims 1-3 and 89-91 are amended to remove functional limitations and provide alternative definitions of the structure of the indentation patterns that Applicants believe will be acceptable to the Office. The deleted functional limitations are now presented in claims 92-94.

Claims 4, 5, 12, and 16 are amended to provide dependency of claims 4-6 and 12-21 ultimately to claims 2 and 3 in addition to claim 1.

Claims 7-11, 22, 23, and 35 are amended to provide dependency of claims 7-11 and 22-41 ultimately to claims 2, 3, 89, 90, and 91 in addition to claim 1.

Claims 13-15 and 17-19 are amended to provide appropriate antecedent basis for the term "food product" that was previously found in claim 1 before amendment herein.

Claims 42-88 are canceled.

New claims 92-94 reintroduce the functional limitations deleted from claims 1-3 and 89-91.

New claim 95 is a counterpart to claim 12 with respect to independent claims 89-91.

New claims 96-99 are counterparts to claims 13-15 and 21 with respect to independent claims 89-91.

New claims 100-103 are counterparts to claims 16-19 with respect to independent claims 89-91.

### Claim Rejections Pursuant to 35 U.S.C. § 102 - Novelty

The Office action rejects claims 1-4, 7-9, 12-18, and 89-91 as anticipated by the disclosure of U.S. Patent No. 5,310,977 to Stenkamp et al. On 24 September 2003, the undersigned attorney for Applicants conducted a telephone interview with the examiner of record. The examiner acknowledged the structures disclosed in the present application are different than the structures disclosed in Stenkamp et al. However, the examiner maintained the position that the term "indentation pattern" encompasses the accordion-fold and corrugated structures disclosed in Stenkamp et al.

Steinkamp et al. fails to appreciate that heat transfer from a susceptor falls off as the square of the distance from the susceptor to the food. That is why corrugated susceptors have not been found commercially useful for browning and crisping microwave foods. Food to susceptor separation distances as small as a few millimeters reduce the heat transfer rate dramatically. Applicants have found that intimate susceptor contact with the food achieves

the highest heat transfer rate and is the most desirable. Intimate food to susceptor contact is only achieved by Steinkamp et al. at the “nadirs” of the folded material or the peaks of the corrugated material, both of which contact only a small fraction of a typical food surface. The significant difference of the present invention is that the area of the indentations is very small relative to the area of food contacted by the susceptor. Thus the overall heat transfer rate to the food in the present invention is superior compared to Steinkamp et al..

Unlike Steinkamp, indentation patterns of the present invention are not used to fold the susceptor back on itself like an accordion, nor do they allow it to be expanded or compressed laterally. In general, the present invention does not have “nadirs,” which are defined by a sharp and instantaneous change between a rapidly ascending and descending surface, nor is the present invention a corrugated structure that provides minimal contact with the food. Rather, the present invention provides broad, flat areas which promote intimate contact with the food.

While Applicants disagree with the examiner’s position and believe that the term “indentation patterns” appropriately describes Applicants’ invention without “reading on” the structures in Stenkamp et al., Applicants have amended independent claims 1-3 and 89-91 to alleviate any concerns of the Office. Applicants do not believe these amendments change the scope of the claims as originally presented with respect to the structure of the microwave packaging material claimed. Alternate descriptions inherent in the term “indentation patterns” are provided. Claims 1 and 89 indicate the indentation pattern is in the nature of a “scored impression.” This description was discussed with the examiner during the referenced interview and was preliminarily approved. Claims 2 and 90 and claims 3 and 91, respectively, provide alternative descriptions of an indentation pattern structure. Applicants believe that claims 2, 3, 90, and 91 are patentable in view of Stenkamp et al.

As the Office did not place any weight on the functional limitations originally included in claims 1-3 and 89-91, these limitations have been removed from the claims and reintroduced in new dependent claims 92-94.

As claims 4, 7-9, and 12-18 are dependant upon claims 1-3 as amended, Applicants submit that these claims are allowable in the event that claims 1-3 are allowed by the Office. Applicants therefore request revocation of the rejection of claims 1-4, 7-9, 12-18 and 89-91.

#### Claim Rejections Pursuant to 35 U.S.C. § 103 - Obviousness

The Office action rejects claims 5, 6, 10, 11, and 19-21 as obvious in view of the combination of Stenkamp et al. and either U.S. Patent No. 6,204,492 to Zeng et al. or U.S.

Patent No. 5,698,127 to Lai et al. Applicants submit this rejection is moot in view of the amendment of claims 1-3 herein and the analysis above with respect to the rejection of the balance of the claims in view of Stenkamp et al. Applicants therefore further request the rejection of claims 5, 6, 10, 11, and 19-21 be withdrawn.

Reinstatement of Withdrawn Claims

Applicants believe independent claims 1-3 and 89-91 are allowable as amended herein. Claims 21-46, therefore, dependent from allowable independent claims. Pursuant to 37 C.F.R. §§ 1.142(b) & 1.143, Applicants request that claims 26-41 presently withdrawn from consideration as claims directed to non-elected species be reconsidered and the requirement for restriction withdrawn.

Conclusion

Applicants believe that claims 1-41 and 89-103 are allowable and request reinstatement of claims 26-41 and issuance of a patent to all claims remaining in the application.

Respectfully submitted this 17<sup>th</sup> day of October 2003.



Brad J. Hattenbach, Esq.  
Registration No. 42,642  
Customer No. 20686

DORSEY & WHITNEY LLP  
Republic Plaza Building, Suite 4700  
370 Seventeenth Street  
Denver, Colorado 80202  
303-629-3400 (TEL)  
303-629-3450 (FAX)  
[hattenbach.brad@dorseylaw.com](mailto:hattenbach.brad@dorseylaw.com)

cc: Client  
Gary M. Polumbus, Esq.  
Docketing